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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/328,565	06/09/1999	KEVIN PALARDY	935-017	6975

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708 THIRD AVENUE
NEW YORK, NY 10017

EXAMINER

RUDY, ANDREW J

ART UNIT PAPER NUMBER

2167

DATE MAILED: 04/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/328,565

Applicant(s)

PALARDY, KEVIN

Examiner

Andrew Joseph Rudy

Art Unit

2167

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

1. The Office Action dated August 20, 2001 (Paper No. 7) identifying only claim 1 as pending was in error. Applicant's May 17, 2000 Preliminary Amendment cancelled claims 1 and 2 and added new claims 3-20. The "UTILITY PATENT APPLICATION TRANSMITTAL" sent by Applicants identifies 39 pages sent to the USPTO. No originally filed claim 2 was received by the USPTO along with these originally filed 39 pages.

As a result, the claims 3-20 identified in the May 17, 2000 Preliminary Amendment have been renumbered, per 37 CFR 1.121, as claims 2-19. That is, claim 3 is renumbered as claim 2, claim 4 is renumbered as claim 3, and so on, ending with claim 20 renumbered as claim 19. Thus, claims 2-19 were pending when Paper No. 7 was forwarded to Applicant.

Applicant's February 20, 2002 Amendment has been received and entered per Applicant's instructions. The claims identified as 2 thru 21 from the February 20, 2002 Amendment have been sequentially renumbered as claims 20-39, per 37 CFR 1.121. Thus, claim 2 from the February 20, 2002 Amendment is now numbered claim 20, claim 3 is now claim 21, and so on, ending with claim 21 now renumbered as claim 39.

The dependency of each dependent claim has not been altered from either the May 17, 2000 Preliminary Amendment nor the February 20, 2002 Amendment. The examiner could not ascertain Applicant's intent of dependency from each Amendment. As a result, renumbered

claim 3 depends from claim 3, etc., while renumbered claim 21 depends from claim 2, and renumbered claim 22 depends from claim 2, and so on.

Thus, claims 2-39 are presently pending.

Specification

2. The specification is objected to as page 30, lines 4 and 11 the acronyms “SKU” and “SPIFF” have not been defined. Correction is required. No new matter may be entered.

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pg 22, ln 19
pg 12, ln 19

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3-19 and 21-25, 27, 29-31 and 36-39 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3-5, 7, 16, 17, 19 each depend from “itself” and is not clear. Claims 6-12, 18, 22-25 and 36-38 depend from one of the aforementioned claims either directly or indirectly and are also not clear.

Claim 21 “a compensation plan” is not clear in relationship to “a store compensation system” from claim 2.

Claim 22 “said compensation plan” lacks antecedent basis.

Claim 27 “biweekly” is not clear. Does applicant mean once every two weeks or twice a week.

Claims 29-31 “said calculating commission” lacks antecedent basis in each claim.

Claim 39 “said commission percentage” lacks antecedent basis.

Clarification is required. No new matter may be entered.

Claim Rejections - 35 USC § 103

4. Claims 2, 15, 20, 21, 26-35 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over “StockBoy Retail Management System” in view of Swart, USP No. 6,347,306.

StockBoy discloses a computer data system including sales and payroll.

Swart discloses a time and attendance event analysis and reporting system to create a compensation plan that provides for the addition of external data 238 that incorporates the concept of recalculation, e.g. claim 5, at predetermined times for accurate payroll payments.

To provide the data system to incorporate the addition of external data to create a compensation plan that incorporates the concept of recalculation at predetermined times for accurate payroll payments for Stockboy would have been obvious to one of ordinary skill in the art in view of Swart. Doing so would provide a timely and accurate employee compensation package payout for a company to keep its accounting books in order.

Regarding dependent claims 26-34 and 39, inputting employment data as recited is well known in the employer/employee relationship (note that StockBoy discloses sale history comparison, page 2 of 3) and would have been obvious to one of ordinary skill in the art when viewing Stockboy and Swart.

Applicant is reminded identical independent claims in the present application are not permitted under the double patenting provision of USPTO law.

5. Further pertinent references of interest (see enclosed PTO-948):

King, US 4,494,127, discloses a CPU 340 and CMOS 358 used in a calculating device.

Webb, Jr. et al., US 4,819,162, discloses a timecard maintenance module 403 in a clock.

Adams, US 5,255,182, discloses a point-of-sale monitoring system.

Wynn et al., US 5,459,657, discloses in Fig. 6 devices 206, 208, 210 for updating information in a time and accounting system.

Fanjoy, US 5,842,181, discloses a calculating device uploaded to a central computer that modifies errors.

Bonner et al., US 5,842,182, discloses a time and event analysis device.

Paizis, US 6,338,042, discloses in FIGS. 3A, 3B recalculations based on new data.

Krenzke, US 6,338,097, discloses an algorithm used in a time data entry system.

6. United States Patent No. (US) 4,270,043 (Baxter et al.); 4,323,771 (Chalker, Jr. et al.); 5,600,554 (Williams) and 5,819,231 (Tremaine) disclosed by Applicant have been reviewed. See enclosed PTO-948. Applicant is reminded of the use of PTO-1449 and the submission of references cited thereon.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Joseph Rudy whose telephone number is 703-308-7808.

The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7239 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

April 3, 2002

Richard Chilcot
Supervisory Patent Examiner
Technology Center 2800
7/16/2

Andrew Joseph Rudy